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ABSTRACT

With the Department of Education's staff remaining stable during a period of increased civil rights complaints, this study examined the Department's Office of Civil Rights (OCR) investigations of discrimination cases involving Asian-Americans. In particular the evaluation looked at 13 specific cases, timeliness and outcomes for fiscal years 1988-95, and whether recent changes at OCR had improved its operations. The evaluation conducted interviews with OCR officials and studied legislation, documents, reports, policies, and OCR records. Results found that 11 of the 13 specific cases reviewed had been resolved and 2 remained open, and that OCR generally followed its established policies and procedures except for its time frames. Of the 13 cases, 4 were closed within OCR time-frames. Overall, OCR resolved complaints and completed compliance reviews on average in less than 180 days--its benchmark for assessing timeliness. Generally, however, OCR took more time to resolve cases involving Asian-Americans. This could be explained in part by the relatively high percentage of investigations and reviews involving Asian-Americans that involve admissions issues which usually take OCR more time to resolve than other issues. Recent changes at OCR have reduced the inventory of cases over 180 days old. Appendixes contain methodology information, descriptions of the 13 cases, complaint investigation information, Department comments, and 8 tables. (JB)

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United States General Accounting Office

GAO

Report to the Honorable Dana Rohrabacher, House of Representatives

December 1995

# DEPARTMENT OF EDUCATION

# Efforts by the Office for Civil Rights to Resolve Asian-American Complaints

ED 392 370

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**United States**
**General Accounting Office**
**Washington, D.C. 20548**

**Health, Education, and**
**Human Services Division**

B-257759

December 11, 1995

The Honorable Dana Rohrabacher
House of Representatives

Dear Mr. Rohrabacher:

As with many other federal agencies and departments responsible for enforcing civil rights and equal employment opportunity laws, over the last several years the discrimination complaint workload of the U.S. Department of Education's Office for Civil Rights (OCR) has increased, but its staffing has remained level. In the early 1990s, compared with the 1980s, generally, the number of compliance reviews decreased and the average time to resolve complaint investigations and complete compliance reviews increased. Because of this, concerns have been raised about how effectively OCR carries out its responsibilities.

On the basis of these concerns, you requested that we examine OCR's complaint investigations and compliance reviews of discrimination cases involving Asian-Americans who applied for or were enrolled in postsecondary schools, such as colleges and universities.[1]

Specifically, you asked us to determine the following:

- For 13 specific cases, did Education's OCR follow established policies and procedures, particularly with respect to timeliness and recordkeeping, in conducting complaint investigations and compliance reviews involving Asian-Americans?
- For fiscal years 1988-95, how did the timeliness and outcomes of complaint investigations and compliance reviews involving Asian-Americans compare with the timeliness and outcomes of those involving other minority groups?
- Have recent administrative changes implemented by OCR improved its operations in conducting and resolving complaint investigations and completing compliance reviews?

To address these issues, we studied pertinent laws, documents, reports, policies, and records in OCR headquarters and in two OCR regional offices. We also obtained information during interviews with OCR officials on interpretations and explanations of the documents we obtained. Our study was limited to OCR activities related to complaint investigations and

[1]In this report, we sometimes shorten the term postsecondary schools to schools.

compliance reviews in postsecondary schools that involved title VI of the Civil Rights Act of 1964. However, for fiscal year 1988 through June 30, 1995, we analyzed the timeliness and outcomes of all the closed investigations and reviews. See appendix I for details on our scope and methodology.

## Results in Brief

Eleven of the 13 cases we were asked to review have been resolved and 2 remain open. OCR generally followed its established policies and procedures in these selected cases, except for its time frames. Of the 13 cases, 4 were closed within its time frames. In seven cases, OCR took at least 26 months. For these seven cases, we could not rely solely on the official case files to understand the reasons for the delays because the official case files did not always reflect actions in OCR headquarters. Therefore, we also had to rely on OCR officials for explanations of what had occurred.

Overall, OCR has resolved complaints and completed compliance reviews on average in less than 180 days—its benchmark for assessing timeliness. Generally, OCR took more time, on average, to resolve cases involving Asian-Americans than it took for cases involving other minority groups. This longer resolution period may be explained in part by the relatively high percentage of investigations and reviews involving Asian-Americans that included admissions issues, which usually take OCR more time to resolve than other issues. Furthermore, OCR found relatively more violations in Asian-Americans' cases than in those of other minority groups, and the findings resulted in comparatively more corrective actions and changes by postsecondary schools.

To OCR's credit, it has initiated administrative changes to improve the timeliness, documentation, and quality of all investigations and reviews. These changes include increasing the use of technology to track and manage active cases and deploying its staff differently to improve productivity. Partly as a result of these changes, OCR's inventory of cases over 180 days old has decreased. It is too soon, however, to determine whether these changes will significantly improve OCR's handling of investigations and reviews over the long term.

## Background

The U.S. Department of Education's OCR is a law enforcement agency. Its primary responsibility is to ensure that recipients of federal financial assistance do not discriminate—on the basis of race, color, national origin,

sex, disability, or age—against students, faculty, or other individuals in educational programs and activities. OCR is responsible for enforcing the following federal civil rights laws as they relate to schools at all levels:

- title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin;
- title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities;
- section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and
- title II of the Americans With Disabilities Act of 1990, which prohibits public entities from discriminating on the basis of disability.

The civil rights laws OCR enforces extend to a wide range of recipients of federal funds. These recipients include all state education and rehabilitation agencies as well as nearly every school district and postsecondary school; thousands of proprietary schools, libraries, museums, and correctional facilities; and other institutions that receive federal financial assistance from Education.

To ensure equal opportunity in the nation's schools, OCR carries out its civil rights responsibilities through a variety of compliance activities. OCR's principal activity is the resolution of discrimination complaints. Most of OCR's staff resources are devoted to such activities as processing, conciliating, and investigating complaints. In an effort to ensure that recipients of federal financial assistance meet their civil rights compliance responsibilities, OCR also conducts compliance reviews, monitors corrective action plans, and provides technical assistance.

Compliance reviews differ from complaint investigations in that they are initiated by OCR; they usually cover broader issues; and they affect significantly larger numbers of individuals. OCR selects review sites on the basis of information from various sources that indicates potential compliance problems, including survey data and information provided by complainants, interest groups, the media, and the general public.

In fiscal year 1995, OCR's staff ceiling was 833 full-time-equivalent positions and its total funding level was $58.2 million. During fiscal year 1994, about 5,300 complaints were filed with OCR. Of these, 27 percent were filed against postsecondary schools.

Until fiscal year 1994, the number of compliance reviews that OCR was able to conduct was inversely related to the number of complaints received and the workload engendered. Because OCR's complaint workload increased from fiscal years 1988 to 1993, the number of compliance reviews OCR initiated declined from 247 in fiscal year 1988 to 138, 32, 41, 77, and 101 in succeeding years.

During fiscal year 1994, OCR started 153 compliance reviews, with about 25 percent directed at postsecondary schools. Of the 153, 62 percent involved race or national origin issues; 17 percent involved gender issues; 8 percent involved disability and other issues; 7 percent involved other issues; and 6 percent involved solely disability issues. In fiscal year 1995, OCR started about 100 compliance reviews.

## OCR's Official Files Lack Complete Documentation for 13 Cases

Our review of the 13 identified cases was hampered by the absence of complete documentation in OCR's official case files. OCR has policies in place delineating the documents that should be included in the official case files in the regional offices. OCR had no similar policies with regard to the official case files in headquarters. Actions that took place in headquarters were not always documented and included in regional case files. According to OCR officials, records pertaining to headquarters activity for these 13 cases were maintained in a chronological filing system—rather than a case file system—that suited the needs of headquarters staff. The lack of documentation hindered our ability to determine the reasons for delays in completing complaint investigations and compliance reviews.

Generally, while the 13 cases were in the OCR regional offices, the official case files were relatively complete, with documents periodically updated to describe investigation and review activities and the results of these efforts. When an investigation or review reached the point at which OCR headquarters became actively involved, however, the official regional files were seldom updated with pertinent notations or documents. Furthermore, official case files were not developed or maintained in OCR headquarters. As a result, we could not trace the full chronology of events for these cases by examining case files. In addition, even when the official case files were updated with documents, we could not always determine what decisions were made or why extended delays occurred because the documents often did not include such information. Because of such gaps in knowledge, the full chronology of many of the cases could not be

developed. (See app. II for a brief description of each of the 13 cases; see table II.1 for a summary of the 13 cases.)

Eleven of the 13 cases involved Asian-American men and women; one was a complaint by a white woman; and another was a complaint by a white man. In addition, several of the cases, although focusing primarily on Asian-Americans or Asian-Indians, also dealt with other minority groups.

In analyzing how these 13 cases were investigated and resolved, we found that OCR generally followed its established policies and procedures. But OCR did not always meet timeliness standards, which is discussed in detail in appendix II. As of September 1995, two complaint investigations remained open. Of the 13 cases, only 4 were closed within OCR's time frames. The cases that took the most time to complete were admissions compliance reviews, which generally involve complex issues and take more resources to complete, or complaints that dealt with complicated or controversial issues, such as admissions or race-targeted financial aid.

Two admissions cases demonstrate the demands that individual cases can make on resources because of the volume of data that must be gathered and analyzed: (1) the compliance review of the University of California at Los Angeles (UCLA) undergraduate schools concerning discrimination against Asian-Americans and the affirmative action program, and (2) the complaint investigation of the University of California at Berkeley undergraduate programs concerning discrimination against white students. Both cases involved premier schools of the University of California system. The two schools enroll, between them, 67,000 students annually. Both investigations entailed several site visits, comprehensive statistical analyses of data for tens of thousands of applicants, and extensive interviewing and reviews of applicant files. Both schools completely changed their admissions processes during the course of the investigations, necessitating additional extensive investigation.

The same regional office that conducted both investigations also completed, during the same time, a compliance review involving admission to the UCLA graduate schools. To complete that review, the regional office investigated, in detail, 40 individual admissions programs; reviewed 2,000 applicant files; and interviewed more than 200 witnesses. The demands of class admissions cases, such as these, impose unique challenges.

## OCR Took More Time to Respond to Asian-American Cases but Found More Violations

During fiscal years 1988 to 1994, OCR's overall workload, as well as that for complaints under title VI of the Civil Rights Act of 1964, increased. During this period, OCR resolved complaints and completed compliance reviews in less than 180 days on average. OCR does not have a standard definition of an "overage" case, but it uses 180 days as a benchmark for assessing timeliness. However, the average time to resolve complaints and complete compliance reviews concerning Asian-Americans in postsecondary schools generally was longer than the averages for cases concerning other minority groups. For complaint investigations, Asian-American cases took longer to complete, on average, than those for any other minority group. For compliance reviews, only cases involving class actions (cases affecting groups of students) and multiple title VI issues (one complaint alleging multiple issues, namely race and national origin) took more time, on average, to complete than Asian-American cases. Data indicated that this occurred partly because (1) Asian-Americans were involved with admissions cases more often than other minority groups and (2) admissions cases generally require more resources and time to complete than other types of cases. In addition, according to the data, OCR's investigations and reviews involving Asian-Americans resulted in relatively more violation findings leading to remedial action or changes by postsecondary schools.

In providing the information and statistics concerning these complaint investigations and compliance reviews, OCR cautioned that the data do not represent the various factors that may affect case resolution. These factors include the volume of data that must be collected and data analyses that must be conducted; the scope, complexity, and number of issues in a case; and the availability of information needed to resolve the issues. The statistical profile also does not reflect the extent to which any average may be unduly influenced by a single case of unusual duration.

### Complaint Investigations Usually Took Longer to Resolve for Asian-Americans Than for Other Minorities

For fiscal years 1988-94, OCR completed 1,511 complaint investigations in an average of 128 days each (see table III.1). The 114 cases involving Asian-Americans took an average of 175 days to complete. In contrast, the 931 cases involving African-Americans averaged 125 days to complete, and the 165 cases involving Hispanics averaged 137 days to complete. The 106 cases for minority whites (those from Eastern Europe, Southern Europe, and the Middle East) averaged 98 days to complete.

During fiscal years 1988-94, 248 of the 1,511 complaint investigations were admissions cases; that is, the complaints involved allegations that people

applying for admission to postsecondary schools were turned down for discriminatory reasons. The 248 admissions cases, on average, took longer to complete—specifically, 174 days—OCR officials said and the statistics documented. The 40 admissions cases involving Asian-Americans took 297 days, on average, to complete. The 115 admissions cases involving African-Americans took 129 days, on average, to complete. The 31 admissions cases involving Hispanics took 276 days, on average, to complete. During this period, OCR took an average of 119 days to resolve 1,263 non-admissions complaints. The average time needed to resolve Asian-American non-admissions complaints was 108 days; this was quicker than the averages for complaints involving African-Americans, 125 days, and "others," 127 days. On the other hand, Hispanics' non-admissions complaints averaged 105 days to resolve, while minority whites' complaints averaged 83 days.

The average time to complete complaint investigations involving Asian-Americans increased during fiscal year 1994, when OCR took an average of 304 days to complete 24 investigations. Of these, eight were admissions cases, which took an average of 602 days to complete. The average time to complete complaint investigations involving admissions issues was higher for all minority groups than for investigations that did not involve admissions issues.

We examined these data further to determine the extent to which the OCR investigations found violations and resulted in benefits to the complaining party or in changes by postsecondary schools to remedy violations. OCR data included four categories as benefiting the complainant or resulting in changes by the postsecondary schools: (1) remedial action agreed to by the complainant, the school, and OCR; (2) remedial action completed by the school; (3) complaint withdrawn by the complainant with changes made by the school; and (4) administrative closure by OCR after changes were made by the school. We found that of the total 1,511 cases, 214 (14 percent) resulted in findings supporting the complainants' allegations or resulting in changes. However, for admissions cases, 58 of the 248 (23 percent) resulted in benefits or changes; while for non-admissions cases, 156 of 1,263 cases (12 percent) resulted in benefits or changes.

We also examined these data according to minority groups; 22 of the 114 complaints (19 percent) filed by Asian-Americans resulted in benefits or changes (see table III.2). This was the highest percentage for any minority group. Furthermore, 16 of the 40 (40 percent) admissions cases involving Asian-Americans resulted in benefits to the complainant or changes made

by the postsecondary school. This was also the highest percentage of any minority group.

In summary, during fiscal years 1988-94, OCR took more time, on average, to complete complaint investigations for Asian-Americans than for cases involving other minority groups. At the same time, Asian-Americans filed a higher percentage of complaints involving admissions issues than other minority groups; these complaints resulted in benefits to the complainant or changes by the postsecondary schools in a higher percentage of cases than for other minority groups.

During the first 9 months of fiscal year 1995—that is, from October 1, 1994, to June 30, 1995—OCR completed a total of 258 complaint investigations; the average time needed to resolve these cases was 121 days. Of these, 13 involved Asian-Americans and took an average of 302 days to complete. One case that took 1,776 days to complete skewed the average. In contrast, the 154 complaints filed by African-Americans took an average of 111 days to complete and the 37 complaints filed by Hispanics, 84 days.

Of the 258 complaint investigations in the first 9 months of fiscal year 1995, 36 resulted in benefits to the complainant and averaged 264 days to complete. Seven of these were admissions cases; the other 29 were not. The 222 complaint investigations that did not result in benefits to the complainant took an average of 98 days to complete. Of the 13 Asian-American cases, 3 were admissions cases that resulted in benefits to the complainants. These took 73, 151, and 1,776 days to complete. The 10 other Asian-American cases that did not result in benefits to complainants took an average of 192 days to complete. See table III.3 for a complete summary, by minority group, of the complaints investigated from October 1, 1994 to June 30, 1995.

## OCR Conducted Few Compliance Reviews That Focused on Asian-Americans

For fiscal years 1988-94, OCR completed 58 compliance reviews, averaging 174 days each. The four cases involving Asian-Americans took 195 days, on average, to complete. The 23 compliance reviews involving African-Americans took 120 days, on average, to complete. The 23 compliance reviews involving class actions, however, took an average of 223 days to complete; those involving multiple title VI issues, 213 days. (See table III.4.)

Of the 58 compliance reviews completed, 39 involved admissions issues. For Asian-Americans, of the four reviews, three were admissions cases.

For African-Americans, 16 of 23 reviews were admissions cases, and 14 of 23 class action compliance reviews were admissions cases. As with complaint investigations, the compliance reviews involving admissions issues generally took more time, on average, to complete than the reviews involving other issues. During fiscal years 1988-94, 67 percent of the compliance reviews completed involved admissions issues; therefore, the average time to complete these compliance reviews significantly affected the average time to complete all compliance reviews.

We examined these data further to determine the extent to which the OCR compliance reviews found violations and resulted in remedial action to benefit affected minority groups or changes by the postsecondary schools to remedy violations. For compliance reviews, OCR only had two categories to track these results: (1) remedial action agreed to by the schools and OCR and (2) administrative closure, with changes made by the schools.

As shown in table III.5, 28 of the 58 completed compliance reviews resulted in remedial action or changes made by the postsecondary schools after violations were found. (Of the 28, only 2 were administrative closures—1 Hispanic case and 1 class action case.) Of the 39 admissions reviews, over 56 percent resulted in remedial action or change; of the 19 non-admissions reviews, about 32 percent resulted in remedial action or change. Of the four compliance reviews involving Asian-Americans, three resulted in remedial action or change; these three reviews involved admissions issues. For Hispanics, the two completed reviews, one of which was an admissions case, resulted in remedial action or change. More importantly, a high percentage of all minority groups appeared to benefit from the compliance reviews OCR conducted—especially when the focus of a review involved admissions issues.

During fiscal year 1994, OCR completed four compliance reviews. Three of these involved African-Americans and one was a class action case. None of the four involved Asian-Americans. The average time to complete the four reviews was 178 days. The one review involving African-Americans that led to remedial action or change by the school took 438 days to complete.

During the first 9 months of fiscal year 1995—that is, from October 1, 1994, to June 30, 1995—OCR completed 11 compliance reviews; all of these involved admissions issues, averaging 245 days each to complete. None focused on Asian-Americans; six involved African-Americans; three involved class actions; and two involved multiple title VI issues. Five of the

reviews resulted in benefits to minority groups or changes by schools. These five reviews took an average of 257 days to complete.

## "Overage" Investigations and Reviews Have Decreased

OCR considers cases that are open for 180 days or more to be "overage," that is, to have taken too much time to complete. We compared overage data for both complaint investigations and compliance reviews as of May 21, 1993, when the current Assistant Secretary for Civil Rights assumed her position; as of September 30, 1994; and as of June 30, 1995.

From May 1993 to September 1994, the number of pending complaint investigations over 180 days old declined from 167 to 122 (27 percent). In addition, the number of investigations over 500 days old declined from 77 to 34, which significantly decreased the average age of these long-term cases (see table III.6). According to OCR data, by June 30, 1995, the number of overage complaint investigations had declined to 100. Of these, 26 were over 500 days old. Of the 167 overage complaints that were pending in May 1993, 15 remained pending as of June 30, 1995.

From May 1993 to September 1994, the number of overage compliance reviews increased from 10 to 18. We could not determine why this increase occurred, but it may have resulted from the increased number of compliance reviews that OCR initiated during the 1990s. Specifically, in 1990, OCR started 32 compliance reviews. In fiscal years 1991-94, the number of such reviews increased to 41, 77, 101, and 153, respectively.

As shown in table III.7, as of September 30, 1994, of the 18 pending compliance reviews, 14 had been open for less than 600 days and 6 of these were less than 300 days old. As of June 30, 1995, the number of pending compliance reviews was 14 and 4 of these had been open for less than 300 days.

## OCR Has Implemented Changes to Improve Operations

During fiscal years 1994 and 1995, OCR implemented several administrative changes to (1) improve its operations overall and (2) revise the planning and conduct of complaint investigations and compliance reviews as well as the documentation required in the official files. These changes included revising procedures to minimize preparing unnecessary documents during investigations and reviews, delegating more authority to the regional offices for decisions on most kinds of cases, and tracking and managing active cases to help ensure that they are completed in a timely and efficient manner.

In its fiscal year 1994 annual report, which was sent to the Congress in April 1995, OCR stated that to further improve operations it has initiated or implemented several other changes under four broad categories: (1) setting priorities, (2) reengineering the approach to respond to individual discrimination complaints, (3) improving technology, and (4) initiating innovative approaches to deploy OCR staff to increase efficiency and effectiveness. It is too soon, however, to determine whether the changes implemented and planned will significantly improve the timeliness, documentation, and quality of OCR's operations over the long term.

## Attention Focused on Setting Priorities

According to OCR, by focusing attention on setting priorities, it will improve timeliness and maximize the impact of available resources on civil rights in schools. To ensure that it addresses the most acute problems of discrimination, OCR will consider as broad a range of information as practical in setting priorities.

OCR also stated that it will devote more resources to helping schools—as well as students and parents—learn to solve the problem of securing equal access to quality education; it will also focus on systemic education reform, which enables communities throughout the nation to understand, commit to, and implement strategies that provide opportunities for all to learn.

Finally, by October 1, 1995, OCR planned to have its revised strategic plan developed, OCR officials said. Under this plan, OCR will move from using a reactive system—almost exclusively responding to complaints—to using a balanced enforcement approach—proactively targeting resources for maximum impact. To implement this approach, beginning in fiscal year 1996, OCR will work to ensure that 40 percent of its resources are dedicated to proactive measures, including priority policy development, high-impact compliance reviews, and targeted technical assistance.

## Changes to How Complaints Are Resolved

OCR has stated that it has fundamentally reengineered its approach to responding to individual complaints of discrimination. These changes move OCR from a required investigative approach to a flexible resolution approach. This approach is described in OCR's updated Case Resolution Manual (CRM) issued in November 1994.

CRM expanded the reasons for closing complaints and reduced paperwork by no longer requiring for each case an investigative plan, investigative report, and letter of findings (LOF). CRM introduced the concept of a case resolution letter to inform complainants of OCR's determinations and provided that LOFs be issued only in limited circumstances; that is, in cases in which (1) a violation is found and negotiation is unsuccessful, (2) a no-violation LOF would serve an important policy function, or (3) a no-violation LOF would have the value of setting a precedent. The revised procedures also require OCR to inform affected parties in complaint cases every 60 days of the status of the cases.

All regional employees have received case resolution training based on the new approach. According to OCR officials, preliminary data show improvement in case resolution timeliness and, anecdotally, in customer satisfaction. Under the new approach, OCR expects to resolve more discrimination complaints with fewer staff.

## Improved Technology Used

When OCR's mainframe-based case-tracking system proved inflexible for the new case resolution process, a team created a personal-computer-based system. Users and developers continue to work together to perfect the system and ensure that needed data are provided quickly and efficiently to line staff, managers, and external users.

Two additional technology initiatives were started in fiscal year 1994:

- to network and provide electronic communication among all of OCR's regional offices and
- to provide on-line access to critical case-resolution resources through an OCR electronic library.

As of September 1995, of OCR's 10 regional offices, 6 were on line and linked with OCR headquarters as part of the electronic network. OCR officials plan to have all regional offices on the network by the end of fiscal year 1996. For the staff linked through the network, OCR policies, survey information, and case-processing data are available electronically. In addition, these OCR staff can communicate with each other electronically. Eventually, OCR officials said, the public will also have access, as appropriate, to the information on the network.

## Plans to Improve Use of Staff

OCR has developed plans to redeploy staff to improve productivity. In this regard, OCR's goals are to deliver a stronger civil rights enforcement program; focus energy on internal and external customer service; reduce formal layers of review; and assign the maximum number of staff to program activities (as an element of this plan, OCR will have at least one-third of the headquarters staff assigned to case resolution activities).

In October 1993, employees in Region II (New York) began a pilot program to improve the region's operations and service to customers. The structure in Region II had been a long-standing OCR example of a traditional hierarchial structure. Under the pilot, Region II reorganized its staff into teams to carry out OCR's assigned responsibilities.

According to OCR, this new organizational structure takes full advantage of the teamwork approach and eliminates most levels of review. The traditional regional structure involved eight or more review levels. The new structure envisions teams handling most of the work of the office, with only a few select documents being forwarded to the regional director level of review. OCR stated that the new approach emphasizes service, support, teamwork, and collegiality, within the boundaries of focused leadership, and it deemphasizes review and control approaches to management.

OCR reported that Region II had accomplished major changes through its new approach of using teams. OCR established criteria for measuring success in terms of efficiency, quality of work products, and improved morale. The data collected on a pilot group and a control group showed major improvements in these areas, OCR reported. For example, the new teams approach reduced the average number of days to resolve a complaint from 169 days to 129 days, a 24 percent improvement, according to OCR.

All offices started moving toward a team-based structure in September 1994. In June 1995, OCR Region VII (Kansas City) announced it had reorganized its staff into case resolution teams, similar to those in Region II, and thereby changed the way in which complaint investigations and compliance reviews are planned and conducted. OCR expects all regional offices and the headquarters office to reorganize similarly by January 1996.

## Conclusions

With respect to the specific cases involving Asian-Americans we were asked to review, OCR's investigations of the 11 closed cases appear to be consistent with the policies and procedures in effect at that time, except for timeliness. However, because OCR's official case files did not always record activities that took place in headquarters, we relied in part on OCR officials' explanations of delays.

OCR generally took longer to resolve these specific cases as well as other cases involving Asian-Americans than it took to resolve cases involving other minority groups. This can be explained by the relatively large number of time-consuming admissions cases, violations, and corrective actions associated with Asian-American cases.

Recent administrative changes initiated by OCR appear to be at least partly responsible for improvements in OCR's timeliness in resolving cases. However, the changes have not been in place long enough for us to assess their long-term impact on the timeliness, documentation, and quality of OCR's investigations and compliance reviews.

## Agency Comments and Our Evaluation

The Assistant Secretary for Civil Rights in the Department of Education provided written comments on a draft of this report (see app. IV). She stated that OCR's recordkeeping procedures required that case files be maintained in the regional offices and include documents related to the investigation or review. She added that these established procedures did not require that the regional files include documentation of all case activity at headquarters. According to the Assistant Secretary, records pertaining to headquarters activity for the 13 cases we reviewed were maintained in a chronological filing system—rather than a case file system—that suited the needs of OCR headquarters staff. She stated that these records describing headquarters activity on the 13 cases were available in the chronological filing system during our review.

We found that the established OCR recordkeeping procedures regarding the regional offices were as described by the Assistant Secretary and the 13 case files we reviewed were generally complete in describing case activities until OCR headquarters became involved. At headquarters, however, activities involving the cases, like teleconferences and data analysis, are not captured in the chronological files. Moreover, while documents on individual cases may be filed chronologically, the documents do not usually explain the delays. As a result, we had to rely on oral statements by OCR headquarters staff for most of the information on

the chronology of events while the cases were being worked on at OCR headquarters. When provided with documents relating to OCR headquarters activities, decisions, or guidance, we considered the information in our analysis.

The Assistant Secretary generally agreed with the section of the draft report that compared the timeliness and outcomes of cases involving Asian-Americans with the timeliness and outcomes of cases involving other racial groups. She pointed out that a few individual cases that took a long time to resolve could unduly skew the results of our statistical analysis of case-processing times. She also asked us to qualify parts of our report to show that OCR cases involving Asian-Americans did not always take the most time to resolve or complete and to highlight that generally for Asian-American cases, OCR found more violations which led to remedial action by postsecondary schools and benefits to the complainants. We revised our report, as necessary, to reflect the Assistant Secretary's comments and concerns.

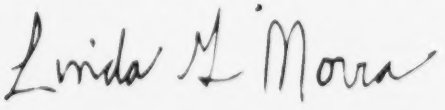
In her comments, the Assistant Secretary stated that OCR initiated the numerous administrative changes discussed in our report to improve overall operations generally as well as case processing specifically. She noted that OCR data show that since the administrative changes were undertaken, the number and percentage of cases for all levels of education pending over 180 days have decreased, not only those for postsecondary schools. She also provided statistical evidence covering fiscal years 1990-94 to show that as a result of the administrative changes, even though the total number of complaints received and compliance reviews started have both increased, OCR has resolved greater numbers of both and in a more timely manner than in the past. Because our review focused only on complaint investigations and compliance reviews under title VI of the Civil Rights Act involving postsecondary schools, we did not revise our report to include these data on OCR's overall operations.

The Assistant Secretary also provided technical comments on specific statements and facts included in our draft report, and where appropriate we used the information to clarify and update our report.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from its issue date. At that time, we will send copies to appropriate congressional committees, the Secretary of Education, and other interested parties. We will make copies available to others on request.

This report was prepared under the direction of Larry Horinko, Assistant Director, (202) 512-7001; Susan Poling, Assistant General Counsel, and Laurel Rabin, Communications Analyst, also contributed to the report.

Sincerely yours,



Linda G. Morra
Director, Education and
Employment Issues

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**Abbreviations**

| | |
|---|---|
| CRM | Case Resolution Manual |
| CUNY | City University of New York |
| GRE | Graduate Record Examination |
| LAP | licensed practical nurse to registered nurse articulation program |
| LEOP | Legal Education Opportunity Program |
| LOF | letter of findings |
| LSAT | Law School Admission Test |
| MIT | Massachusetts Institute of Technology |
| OCR | Office for Civil Rights |
| SAT | Scholastic Aptitude Test |
| UC | University of California |
| UCLA | University of California at Los Angeles |

Appendix I

# Scope and Methodology

For our overall timeliness examination, we analyzed computer files of all OCR complaint investigations and compliance reviews closed from October 1, 1987, through June 30, 1995, that focused on allegations of discrimination at postsecondary schools (colleges and universities) under title VI of the Civil Rights Act of 1964. We also studied OCR's Investigation Procedures Manual, which was in effect from June 1987 until November 1993. The manual describes the procedures OCR staff are expected to follow in an investigation, including time frames for completion and the documents and records to be produced. The manual covers most case-related activities but is not intended to cover all the circumstances that could arise in the investigation of a case. Specific sections were updated periodically, as necessary.

The Investigation Procedures Manual was replaced on November 30, 1993, by the Complaint Resolution Manual, which changed many of the procedures and documents to be produced. We studied the Complaint Resolution Manual as well as OCR's updated Case Resolution Manual issued in November 1994. We also studied relevant policy documents concerning major court decisions as well as admissions and affirmative action issues in postsecondary schools.

Finally, we examined the official case files, compiled and maintained by OCR's regional offices, for 13 specific cases. We did this to determine the chronology of events while the cases were being processed, whether delays occurred during the investigations and reviews, and whether the decisions and resolutions of certain cases had a basis in policy and law. We did not substitute our judgment for OCR's. For these 13 cases, OCR headquarters officials said no official case files had been established in headquarters, so little documentation was available when the cases were sent to OCR headquarters for additional statistical analyses, legal review, or management review. As a result, we were unable to obtain or develop a complete chronology of events for some cases after they left the regional offices; instead, we had to rely on explanations by OCR headquarters officials as to what delays occurred and which issues were under review.

To determine the timeliness and outcomes of OCR's complaint investigations and compliance reviews for Asian-Americans as compared with other minority groups, we obtained data tapes and printed reports from OCR covering fiscal years 1988 through 1995. These tapes summarized the data according to minority groups or other categories of cases, such as class action and multiple title VI cases. Our study included closed and pending cases for each fiscal year and presence or absence of violations of

nondiscrimination laws for the closed cases. We used this information to determine the cases that resulted in (1) benefits to complainants or minority groups or (2) changes by postsecondary schools to their affirmative action programs or to their policies and procedures to remedy violations.

OCR headquarters officials provided us with various manuals, policies, and procedures, which had been developed from May 1993 through June 1995, after the current Assistant Secretary for Civil Rights was appointed. She changed many administrative practices affecting how OCR carries out its complaint investigations and compliance reviews. Some of these policies and procedures have been implemented; others are still in the planning stages. To determine whether the administrative changes would improve OCR operations in conducting complaint investigations and compliance reviews, we studied the documents provided and considered the explanations of OCR officials.

Our work was conducted from March 1994 to August 1995 in accordance with generally accepted government auditing standards.

Appendix II

# Descriptions of 13 Specific Cases

This appendix includes brief descriptions and chronologies of the 13 cases that Representative Rohrabacher asked us to review and, to the extent that information was available, why OCR's investigations and reviews were delayed. The information presented is based on available documentation in OCR case files and comments and explanations made by OCR officials. The type of case, the date the complaint investigation or compliance review was opened, and the date a letter of findings (LOF) was issued or the case was closed or whether the case was still pending are given in table II.1.

**Table II.1: Summary of 13 Cases**

| University | Type of case | Date opened | LOF, closure date, or pending | Total time to respond (months) |
|---|---|---|---|---|
| UC Berkeley Boalt Hall Law School | Compliance review | 7/90 | 9/92 | 26 |
| UCLA graduate schools | Compliance review | 1/88 | 8/93[a] | 67 |
| UCLA undergraduate schools | Compliance review | 1/88 | 9/95 | 92 |
| City University of New York | Complaint | 6/92 | 1/93 | 7 |
| Santa Clara University | Complaint | 12/92 | 2/93 | 3 |
| UC San Diego | Complaint | 10/91 | 3/94 | 29 |
| University of Texas Law School | Complaint | 10/92 | 1/94 | 4[b] |
| UC Berkeley School of Optometry | Complaint | 5/88 | 2/94 | 69 |
| University of Hawaii | Complaint | 7/92 | 3/93 | 3[b] |
| UC Davis Medical School | Complaint | 11/91 | 3/94 | 28 |
| UC Berkeley undergraduate schools | Complaint | 5/89 | Pending | |
| University of Wisconsin Madison Law School | 2 complaints[c] | 4/91<br>7/92 | 8/94[d]<br>Pending | 40 |
| Massachusetts Institute of Technology | Complaint | 8/92 | 4/94 | 20 |

[a]The university agreed to change some policies and procedures after OCR found violations during its investigations. OCR monitoring continues.

[b]Time frames were tolled for these cases because of pending litigation.

[c]Both filed by same person.

[d]One allegation is still under investigation by OCR.

In addition, this appendix provides information on specific issues: (1) the circumstances that caused OCR to revise its findings of discrimination 3 years after the original LOF was issued in regard to the University of California at Los Angeles (UCLA) graduate mathematics program (case no. 09-89-6004); (2) whether OCR followed established policies and

procedures in reaching its no-violation decision regarding the University of California (UC) at San Diego case (case no. 09-92-2002); and (3) whether OCR's decision to administratively close the Santa Clara University School of Law case (case no. 09-93-2027) was consistent with established policy. In conducting the case file reviews, we focused our attention on whether OCR's decisions were based on law and policy, but we did not substitute our judgment for that of OCR.

We also provide information on our review of the other cases that were administratively closed and whether OCR followed its policies and procedures with regard to time frames.

## University of California at Berkeley, Boalt Hall (Case No. 10-90-6001)

On October 19, 1989, Representative Rohrabacher, Representative Gingrich, and Mr. Duncan Hunter, Chairman of the Republican Research Committee, wrote to the Department of Justice about the admissions program at Boalt Hall, the law school of the University of California at Berkeley; Justice referred this letter to OCR on October 26, 1989. OCR provided its report on the case to the requesters on April 4, 1990, and informed them that OCR would conduct a compliance review based on the information collected. According to an OCR regional official, this case involved complicated legal issues with a race-based waiting list and preliminary documents raised serious questions about compliance.

The OCR regional office conducted its review and submitted to OCR headquarters a draft investigative report and draft LOF in November 1990. The regional office case file did not document events from the November 1990 submission to headquarters to the signing of the voluntary compliance and settlement agreement on September 25, 1992. From November 1990 to 1992, headquarters had concerns about the statistical analyses and there were numerous discussions about all aspects of the case. OCR officials stated that the region began settlement negotiations in January 1992. OCR officials also stated that during this time Boalt Hall was in transition with a newly appointed dean. As a result, it was 26 months from when the compliance review was initiated until the voluntary compliance and settlement agreement was signed. OCR's procedures at that time stated that an LOF should be issued within 90 calendar days from the date of the first site visit.

Since November 1990, Boalt Hall has (1) revised its admissions and waiting list procedures and (2) submitted required annual reports to OCR describing how these changes have been implemented. After receiving the

third annual report in November 1994, OCR declared that Boalt Hall was in compliance and OCR monitoring and activities would cease.

## University of California at Los Angeles Graduate Schools (Case No. 09-89-6004)

In January 1988, OCR regional staff began a compliance review of admissions practices of all 84 departments with graduate programs at the UCLA. UCLA was targeted because preliminary information indicated that although UCLA had a large number of Asian-American applicants, the overall admission rate for Asian-Americans was lower than the overall rate for whites in many programs and because the Department of Justice had received a number of inquiries concerning the University of California system.

Each graduate department had its own admissions policy. After obtaining preliminary information and analyzing computerized data on all departments, OCR targeted 40 departments for in-depth file reviews based on statistical analysis of admission rates and grade point averages, and other possible indicators of discrimination. From the beginning, data collection was a problem because not all departments had retained 3 years of admissions data.

OCR headquarters officials were involved in the decisions on the scope and approach of the compliance review from the start. OCR officials stated that OCR had not previously undertaken an admissions review comparable in magnitude to the UCLA admissions review, and a number of approaches and means of resolution were explored during the review. Documents indicate that throughout this review, many differences had to be worked out between OCR headquarters and OCR regional staff. These differences included the targeting of departments, the comparison of Asian-American and white admissions, and whether violations were found during the investigation of the 40 different admissions programs targeted for in-depth review.

OCR's first site visit was in April 1989, more than a year after it informed UCLA that it would be initiating a compliance review. During that year, OCR set out the scope of the review, identified the information UCLA had available, and identified how admissions decisions were made for individual graduate programs. OCR officials noted that the review was extensive and included a review of 84 graduate programs, not just the Mathematics Department eventually cited.

In its LOF of October 1, 1990, OCR found UCLA in violation of title VI of the Civil Rights Act of 1964 because of its admissions practices for the graduate Mathematics Department.[2] In particular, OCR found that the department had discriminated against five Asian-American applicants who, if provided equal treatment under admissions standards articulated by the department, should have been accepted. OCR deemed UCLA's three different explanations of admissions decisions given over more than a year to be pretext for discrimination.

UCLA disagreed with OCR's findings. UCLA asserted that OCR (1) misunderstood the department's initial evaluation rating system, which was just a recommendation to the vice-chair, and (2) failed to interview the vice-chair who actually made the admissions decisions but was on sabbatical when OCR first visited the Mathematics Department in 1989 and 1990. UCLA expanded the statistical analysis and produced statistics showing no difference in admission rates for whites and Asian-Americans for numerical applications when they were grouped with ratings of "3.0 and above" and "below 3.0." OCR had limited its comparison to a group of whites who had been admitted and a group of Asian-Americans who had been denied admission. In UCLA's expanded group comparison, UCLA showed that there were 22 white applicants in the same rating range (that is, ratings of 2.4 and above) as the three OCR-identified Asian-Americans who were denied admission based on the use of the same criteria. UCLA maintained that three admitted whites in that group had substantially higher academic qualifications than the three rejected Asian-Americans OCR identified.

OCR based its violation LOF partially on the fact that the different explanations by UCLA officials regarding admissions decisions were a pretext for discrimination. Just days before the LOF was issued, OCR officials learned that the vice-chair who had actually made the admissions decisions had not been interviewed; UCLA's first and second explanations concerning admissions to the Mathematics Department program were provided by officials who knew little about the actual admissions criteria used. OCR interviewed the vice-chair before the LOF was issued, but found that his explanations could not fully account for all admissions decisions. OCR issued the LOF without bringing its concerns to UCLA's attention for further explanation. Later investigation showed that OCR staff placed great

[2]OCR found UCLA to be in compliance with title VI in 75 of the 84 graduate programs examined. For eight programs in which insufficient data were available to OCR to determine compliance, UCLA agreed to maintain additional records for 3 years to enable OCR to make a determination of whether its admissions decisions for these eight programs are in compliance with title VI. OCR continues to monitor these programs.

importance on the numerical ratings developed by the Mathematics Department's Admissions and Support Committee. But, in fact, admissions committee members would rate candidates as "admit Ph.D." despite numerical ratings below that required for admission to the department.

The regional office continued its negotiations with UCLA and conducted a post-LOF site visit, including examination of the admissions files, on February 27, 1991, 4 months after the LOF was issued. This review of the files was more comprehensive than any prior review. In particular, the review was expanded to consider unsuccessful white applicants and successful Asian-American applicants.

OCR found that the admissions decisions were cumulative in nature, with various objective and subjective factors weighed against each other by the vice-chair. OCR also found that overall undergraduate grade point average was of little or no consequence, although it was used in the ratings. The grade point average for math courses was pertinent, and grades received in particular math courses were very important. The applicant's "statement of purpose" was also important because the department rejected applicants who suggested that their ultimate career goals were outside math. In addition, applicants from less renowned schools were at a competitive disadvantage. They needed strong letters of recommendation from professors known to UCLA faculty.

The supplemental investigation showed that OCR had not fully understood the criteria it was given by UCLA officials in September 1990. For example, one of the criteria given was that an applicant's stated interest in applied mathematics would enhance the applicant's position. The October 1990 LOF stated that OCR's examination of files had not verified this criterion. However, during the supplemental examination, OCR discovered that the boost was not for all candidates interested in applied math, but only for certain subareas, particularly for applicants in computational fluid dynamics and those already working in the defense industry. Also, the supplemental examination found that master's degree applicants were not held to the same standard as Ph.D. applicants by the department.

The regional office found at the outset that it had received the wrong information from university and Mathematics Department officials. In reexamining files and expanding the examination to files of lower ranked Asian-Americans admitted, OCR found that lower ranked Asian-Americans also benefited from the application of subjective admissions criteria. Further review showed only two possible examples of discrimination.

Both of these involved students within the range of white applicants admitted and white applicants rejected. Both cases of possible discrimination were vulnerable to being rejected, one because the applicant had a lower quantitative Graduate Record Examination (GRE) score by a substantial degree than anyone admitted and the other because the applicant had a combination of low GRE scores, a degree from an unknown school, and a stated interest in obtaining a certified public accountant license, a career goal outside mathematics.

The regional office submitted a revised investigative report to headquarters on July 23, 1991, in which it concluded that UCLA's Mathematics Department was not in violation of title VI and recommended the withdrawal of the violation LOF.[3] On December 26, 1991, the Deputy Assistant Secretary for Policy concurred and suggested revisions of the draft investigative report to the regional office. The next 20 months were spent by the regional office and headquarters exchanging drafts of the revised LOF.

On August 8, 1993, OCR issued a revised LOF concerning the Mathematics Department. It stated that because of new evidence, OCR had revised its original findings and no violation had been found to have occurred. However, OCR required the Mathematics Department to keep records of its admissions decisions for the 1994-95 academic year.

Under its required time frames, OCR should have issued its LOF within 90 days of the first site visit and initiated formal enforcement action within 180 days. However, OCR did not issue its LOF until 18 months after its first site visit in April 1989 and never initiated formal enforcement action.

## UCLA Undergraduate Schools (Case No. 09-89-6004)

This compliance review was initiated for UCLA's undergraduate schools in January 1988 because of the same factors taken into account in initiating the compliance review of UCLA's graduate programs (see the previous case). OCR headquarters was involved in this review from the start.

During this review, OCR had continuing problems obtaining usable data from the university. For example, OCR originally requested 5 years of admissions data, but UCLA could only provide data for 2 years. The data tapes UCLA provided were not compatible with OCR's system. Although the

[3]We asked the regional office and headquarters staff if a violation LOF had ever been previously withdrawn. The San Francisco Regional Office had never done it before. Headquarters staff indicated that they knew of two instances, one in 1985 and another in 1988, both dealing with discrimination on the basis of disability and the definition of a qualified individual with disabilities.

statistical analyses division in OCR headquarters first became involved with the university's data in 1989, it could not complete its work until early 1993. According to OCR, data analysis was hindered because (1) UCLA originally sent hard copy, which proved insufficient, instead of computer tapes; (2) UCLA objected to providing certain data; and (3) the data could not be interpreted without obtaining the master files from UCLA and identifying and sorting the codes and variables. Because of the enormous number of admissions applications processed each year by UCLA, the data were extensive and time-consuming to analyze.

After the OCR regional office completed its site work in April 1989 and drafted its investigative report, UCLA changed its admissions policy but did not inform OCR immediately. OCR then reinterviewed university officials and prepared a revised draft investigative report. UCLA again changed its admissions policy in 1990. As a result, OCR had to request updated data from UCLA for 2 additional academic years. Because of the various factors affecting this case, the investigative plan for this review was not made final until January 1990—2 years after the review started.

From January 1990 through late 1993, OCR undertook investigative work, statistical analyses, and legal analyses in both the region and headquarters. In November 1993, a draft investigative report on the UCLA School of Letters and Science was prepared, but it was never made final or sent. In February 1994, OCR sent a letter to UCLA requesting additional data, but UCLA did not provide the data within the time frames set out by OCR. OCR ultimately determined that additional data and analysis were not needed to reach a resolution of the case. In August 1994, the region sent a draft LOF to OCR headquarters for review.

In September 1995, OCR issued a no-violation LOF to close the case. OCR found that UCLA had not (1) established quotas or admissions limits for Asian-American applicants or (2) discriminated against Asian-American applicants. OCR also determined that UCLA's affirmative action plan complied with title VI. From the date the case was opened in January 1988 until it was closed in September 1995, 92 months elapsed, making this the lengthiest of the 13 cases that Representative Rohrabacher asked us to review.

## City University of New York, York College (Case No. 02-92-2084)

A white woman alleged in May 1992 that the City University of New York (CUNY), York College discriminated against her on the basis of race because she was denied admission to the licensed practical nurse to registered nurse articulation program (referred to as the LAP program). The LAP program is part of the Collegiate Service and Technology Entry Program, a New York State program authorized by law to increase the enrollment and retention of economically disadvantaged or minority students in programs that lead to professional licensure and employment in scientific, technical, health, and health-related professions. By law, eligibility is limited to New York State residents who meet those qualifications. Also, a potential applicant seeking enrollment in the LAP program must meet several requirements dealing with licensure, testing, nursing experience, and basic skills; the applicant must also be either from a designated minority group (African-American, Hispanic, Native American, or Alaskan native) or meet the economic eligibility criteria.

OCR's investigation, begun in June 1992, revealed that the complainant contacted the college in early May 1992 and requested information about the LAP program. The complainant later contacted the LAP program director and was informed of the admissions criteria. After talking to the complainant, the program director determined that she was not eligible economically or under the minority criterion. OCR's investigation showed that the complainant did not submit a written application.

Title VI of the Civil Rights Act of 1964 allows for consideration of race in admissions policies and programs when race is not the sole criterion. Admissions programs in which economic disadvantage and race are two of the possible criteria for admission have been held valid under title VI. Accordingly, OCR found that CUNY was in compliance with federal law with respect to the issue.

All work on this case was done by OCR Region II (New York) staff; and although the case was open from June 1992 until January 1993—about 7 months—it had been "tolled" from July 29, 1992, until October 8, 1992, while OCR waited for CUNY to provide detailed admissions data. That is, the case was kept open, but the time frames were suspended pending the delivery of the requested data. OCR met its time frames for this case in accordance with its Investigative Procedures Manual.

## Santa Clara University (Case No. 09-93-2027)

Representative Rohrabacher filed this complaint in December 1992 based primarily on an article in a San Jose, California, newspaper in May 1991.

Representative Rohrabacher's complaint referred to a commentary, written by the dean of Santa Clara's Law School, and alleged that the admissions standards for the 1990 entering law school class were substantially different for different races. Representative Rohrabacher alleged that the law school appeared to have a track system of admissions that insulated some applicants, on the basis of race, from competition with other applicants.

OCR acknowledged receiving the complaint letter on December 16, 1992, and asked Representative Rohrabacher to provide additional information about the alleged discrimination; OCR noted that the complaint would be closed in 45 days if additional information was not provided. None was provided, and OCR subsequently closed the case administratively, that is, without investigation, on February 19, 1993.

Before closing the case, OCR reviewed the news item Representative Rohrabacher had attached for facts to support his statements that (1) the admissions standards substantially differed for different races and (2) Santa Clara has, in effect, a track system that insulates some applicants from competing with others. OCR noted that the article reported the grade point averages and Law School Admission Test (LSAT) scores in which composite scores for two minority groups were lower than those for the class as a whole. OCR found that those statistics did not provide sufficient basis for it to identify an issue of discrimination under the laws OCR enforces. OCR issued a policy interpretation that explains that affirmative action programs in admissions cannot have set-asides based on race or ethnicity. However, OCR also stated that race could be used as a "plus" factor in admissions processes and that nothing in the article gives evidence of a quota system, a track system, or a cap by group.

OCR also followed its Investigative Procedures Manual section I.A.4(a), which listed the elements of a "complete complaint." A complete complaint includes (1) description of the discrimination alleged to have occurred, (2) some indication of the factual bases for a complainant's belief that the discrimination has occurred, and (3) sufficient detail to enable OCR to identify the issues raised under the laws it enforces. OCR did not find the news item to contain sufficient detailed information.

OCR officials did not communicate with Representative Rohrabacher or his staff, other than through these two letters, and received no additional information concerning this complaint, according to OCR officials.

## University of California at San Diego (Case No. 09-92-2002)

Representative Rohrabacher filed this complaint in October 1991 with OCR, partly on the basis of a San Diego newspaper article dealing with eight Filipino-American high school students from California who had problems gaining admission to UC San Diego.

Representative Rohrabacher charged that it appeared that about 40 percent of the places in the freshman class were reserved for applicants of certain races, while applicants of other races, including Filipino-Americans, were excluded from competing for those places. He added that this seemed to be a quota based on race that illegally discriminated against Filipino-Americans and possibly applicants from other races.

OCR began its investigation in October 1991 and followed its standard investigative procedures, including time frames found in its Investigative Procedures Manual, in acknowledging the letter, developing an investigative plan, conducting its investigation, and drafting its investigative report.[4]

On April 3, 1992, the draft investigative report was submitted to headquarters for review. Although headquarters review was not standard practice at that time, the cover note from the regional director indicates that the issues raised in the complaint involved OCR's fiscal year 1991 national enforcement strategy issues. In addition, admissions questions dealing with affirmative action are more sensitive than most other issues, according to the note.

The policy unit at headquarters prepared a memorandum on the investigative report and forwarded the case to the Deputy Assistant Secretary for Policy on July 17, 1992. The regional office chronological file indicates some conversations between headquarters and regional staff in August 1992, but there is no other record of actions on the case until April 1993. The case file was apparently "lost" in the Deputy Assistant Secretary's office for 10 months, from summer 1992 to April 1993, OCR headquarters staff stated.[5] The OCR tracking system at that time assigned deadlines until cases reached the Assistant Secretary's or Deputy Assistant

[4]The investigation was tolled briefly from December 20, 1991, to January 13, 1992, because witnesses were unavailable, but proper documentation appears in the file of the tolling of the time frames in accordance with the Investigative Procedures Manual.

[5]During this time, there was also a change in administration and President Bill Clinton had not yet appointed an Assistant Secretary for Civil Rights. The position of Assistant Secretary for Civil Rights remained vacant until May 1993.

Secretary's office but did not track cases or assign deadlines in those offices.

After the case resurfaced in April 1993, the policy unit again reviewed it and drafted another memorandum, but no further progress occurred until November 1993, when headquarters staff provided oral comments to the regional office on the draft investigative report during a conference call. A no-violation LOF was issued within 3 months, but that was almost 2 years after the investigative report was sent to headquarters from the regional office. From the time the case was first submitted to headquarters in April 1992 until the LOF was issued, more than 23 months had elapsed: about 3 months was attributable to the regional office and 20 months to headquarters. But OCR's Investigative Procedures Manual at that time stated that the LOF should be issued within 135 calendar days.

OCR's investigation found no evidence that the university's admissions system used for fall 1991 operated as a quota system, nor did it find that the university reserved 40 percent of its places for students of a particular race or national origin. OCR found that one aspect of the appeals process used in the admissions system in 1991 was inconsistent with OCR's policy interpretation because the appeals process was not narrowly tailored. However, the university had already modified this admission appeals process before OCR completed its investigation.

OCR also examined whether Filipino-American students were affected by this admissions appeals process. It found only one student who potentially was adversely affected. OCR determined that this student did not meet the minimum requirements for admission and that his chances of success at the university were so unlikely that further review was not warranted.

The official file for this case included pertinent documentation from October 1991 until April 1992, when the regional office staff did their work. After the case was forwarded to headquarters, few documents were included in the files and little information was included in the official case file to show the issues that headquarters staff were considering.

## University of Texas Law School (Case No. 06-93-2005)

An Asian-Indian man alleged discrimination on the basis of national origin because the University of Texas had failed to give equal consideration to Asian-Indian applicants, as compared with consideration given to African-American and Hispanic applicants, in admission to the School of Law. The complainant had a 3.5 grade point average in college, an LSAT

score that placed him in the 68th percentile, and had worked as an intern in the district attorney's office in Harris County, Texas. The complainant filed his complaint after applying to the law school and being rejected for admission twice.

OCR Region VI staff initiated an investigation in November 1992 and obtained information from the complainant and the university during January 1993. OCR was advised of a pending class action suit against the university in February 1993. OCR determined that the class action suit involved the same issues as those in the charge filed with OCR by this complainant even though the complainant was not a party to the suit. Therefore, in accordance with its Investigative Procedures Manual section IV.B.2(b), OCR advised the complainant in May 1993 that its investigation was being tolled until the litigation was resolved. That is, the case would be kept open, but the time frames were suspended pending the outcome of litigation.

In November 1993, OCR revised its investigative procedures. Under the new procedures, complaints that involve issues in pending litigation cases are now closed and the complainant is informed that he or she may refile the complaint following termination of the court proceeding. In mid-January 1994, OCR sent a letter to the complainant informing him of the scheduled trial date and advising him that the case was being closed. The complainant was also informed that he could refile his complaint within 60 days following the termination of the court proceeding if there was no decision on the merits or settlement of the complaint allegations. This accords with the revised procedures found in the Case Resolution Manual, section I.H.5. The complainant did not refile his complaint.

## University of California at Berkeley School of Optometry (Case No. 10-88-2201)

A Chinese-American woman filed a complaint in May 1988 against UC Berkeley alleging that she had been discriminated against on the basis of national origin because she had been denied admission to the School of Optometry. OCR Region X (Seattle) worked on the case for about 10 months. In March 1989, it sent a letter to the complainant, advising her that on the basis of the evidence gathered during the investigation, OCR did not anticipate that it could substantiate the complainant's allegations of discrimination. This letter was not an LOF, and the complaint was not closed at this time. Instead, because of questions raised regarding the School of Optometry's affirmative action program during the investigation, headquarters directed Region X in July 1989 to investigate the affirmative action plan in the School of Optometry. Headquarters indicated Region X

could either issue a partial LOF on the individual complainant's facts or address all issues in a single LOF. Region X chose the latter option.

OCR performed a statistical analysis of 1988 admissions data, but OCR headquarters later decided to also review 1989 and 1990 admissions data. The region conducted an additional site investigation and submitted a draft investigative report and LOF to headquarters on October 9, 1991. Headquarters conducted additional statistical analyses, held several conference calls with the regional office, and reviewed applicant files that it had obtained from the region. On January 6, 1994, headquarters returned the case to the regional office with comments, and on February 17, 1994, the final LOF was issued.

OCR exceeded its established time frames for this case. The OCR standard in effect at the time the case was initiated was that an LOF be completed within 105 calendar days; this investigation took about 69 months to complete. OCR officials explained that much of the case-processing time was associated with extensive statistical analyses of the affirmative action issue and the issue of possible discrimination against Asian-Americans as a class, with data covering a 3-year period.

## University of Hawaii at Manoa (Case No. 10-92-2066)

A white male veteran alleged in July 1992 that the University of Hawaii at Manoa had discriminated against him on the basis of race by denying him admission to its law school. The complainant alleged that places were set aside for particular minorities and that the minorities admitted to the law school had lower qualifications than the nonminorities rejected. The complainant objected to the university's preadmissions program, which accepts 12 students from among disadvantaged applicants or ethnic groups underrepresented in the Hawaii Bar for a 1-year program. The complainant further claimed that his "unique veteran experiences" should be considered in offsetting his relatively low academic standing and application test scores.

In the course of initiating its investigation on August 13, 1992, OCR learned that the complainant had filed suit in U.S. District Court in Hawaii on July 7, 1992. An OCR representative informed the complainant that OCR's procedure is to defer its investigation until litigation that concerns the same allegations is resolved. OCR tolled the case from August 25, 1992, until February 18, 1993.

In January 1993, the court dismissed the case because the plaintiff (that is, the complainant) failed to show that his rejection was the result of the preadmissions program. The court found that the plaintiff simply did not meet the university's law school admissions criteria. His grade point average and LSAT score were below the median, that is, far below those of other accepted applicants. No one, including those admitted under the preadmissions program, had an LSAT score as low as the plaintiff's. Furthermore, he was from a noncompetitive school.

Two months later, on March 11, 1993, OCR administratively closed the case. Under OCR's Investigative Procedures Manual, a case should be closed if OCR (1) obtains information indicating that the issue raised has been resolved in a manner consistent with title VI of the Civil Rights Act and (2) determines that there are no remaining issues appropriate for investigation. Section IV.A.2(d) of the manual states that cases in which the same issues involving the same complainant have been subject to a decision by a federal court may be closed.[6] OCR actually closed the case under section IV.A.(2)(g), which states that if OCR obtains information indicating that the issues raised by the complaint have been resolved, OCR should determine if there are current issues appropriate for investigation; if not, the case should be closed. OCR determined that the issues raised in the OCR complaint had been resolved in accordance with title VI standards and that there were no outstanding issues in the complaint that had not been addressed.

OCR officials indicated that the case was closed because (1) the judge determined that the complainant lacked standing because of low LSAT scores and a poor academic record to challenge the preadmissions program and (2) this was an individual complaint.

Although OCR could have continued the class issue of whether the preadmissions program violated title VI, it was not required to do so. The complainant had not made any specific allegation on behalf of individuals other than himself. OCR did not reach any conclusion regarding whether any admissions program was legal or illegal. OCR officials stated that the allegations the complainant presented were insufficient to raise a class issue by themselves or to show that a practice existed that was discriminatory. OCR officials stated there were no unresolved issues appropriate for investigation.

[6]Section I.A.8(e)(2) could also be applicable: It states that if there has been a prior judicial determination covering substantially the same issues raised in the OCR investigation, it may be appropriate for OCR to close the case.

## University of California at Davis School of Medicine (Case No. 09-92-2015)

A Chinese-American woman applied to the University of California at Davis' medical school and was denied admission even though she had a 3.94 grade point average, had participated in many extracurricular activities, and had received several awards. She alleged that the medical school discriminated against her because she was Asian-American.

OCR's regional office investigated the allegations from November 1991 to April 1992, drafted an investigative report, and forwarded it to OCR headquarters for review. From April 1992 through November 1992, additional statistical data on admissions to the medical school were requested and analyzed at OCR headquarters. From November 1992 until May 1993, there was no apparent activity in the case. During summer 1993, another draft investigative report was prepared. In November 1993, during a telephone conference call between OCR regional staff and OCR headquarters officials, the final issues of this case were worked out; shortly afterward, a draft LOF was prepared and submitted to OCR headquarters for review in January 1994. The LOF was issued on March 21, 1994.

Part of the delay in closing this case occurred because the Deputy Assistant Secretary was concerned about the affirmative action plan at the university; he wanted to make sure that the plan had not influenced the university's decision to reject the complainant, OCR headquarters officials explained. The case file included complete documentation and explanations of case activity from when the complaint was filed until November 1992. However, the official case file, which is kept in the regional office, included no other documents until the no-violation LOF was issued in March 1994.

OCR exceeded the established time frames for this case. The standard in effect at the time the case was initiated was that an LOF be completed within 135 calendar days; this investigation took about 28 months to complete. OCR officials noted that much of the length of this case is attributable to the complexities and sensitivity of the affirmative action issues and the extensive statistical analysis that was conducted.

## University of California at Berkeley Undergraduate Schools (Case No. 09-89-2099)

A journalist filed complaints during 1989 with OCR about UC Berkeley, Harvard, and UCLA; each was a separate OCR case. OCR was already investigating admissions programs at Harvard and UCLA. In the Berkeley case, the complainant charged that too many underrepresented minorities, Asian-Indians, and Filipinos were being admitted to UC Berkeley and too few qualified Asian-Americans and whites were being admitted. He criticized the university's affirmative action program. He also alleged that underrepresented minority students were being segregated into the UCLA and UC Berkeley campuses and away from the other UC campuses.

Originally, the investigation initiated in May 1989 was to cover the academic years beginning in 1987, 1988, and 1989. As time went by, however, additional years were added to the investigation because the university changed its admissions policies and OCR's preliminary findings were no longer current. According to OCR, obtaining usable data from the university was also a problem throughout the investigation. Over time, OCR conducted 10 site visits.

In addition to the on-site work done by the OCR regional staff, the OCR headquarters surveys and statistical support branch, beginning in August 1991, analyzed university data on several occasions and issued two reports summarizing its work. The case file showed no activity on the case from August 1993 until July 1994.

In July 1994, OCR requested more data from the university. In October 1994, OCR wrote a follow-up letter to the university again requesting data. As of September 1995, this case was still open. OCR officials told us that substantive changes occurred in the admissions policy in 1990, 1991, 1992, and 1994. OCR conducted additional on-site interviews to obtain clarification of the admissions changes taking place.

## University of Wisconsin at Madison (Case Nos. 05-91-2062 and 05-92-2155)

An Asian-Indian man filed two complaints with OCR after being denied admission to the University of Wisconsin at Madison's Law School in 1991 and 1992. He alleged that the university had discriminated against him and other Asian-American applicants for its Legal Education Opportunity Program (LEOP) because other minority groups were automatically eligible whereas Asian-Americans were not. LEOP offered special admissions and need-contingent, race-targeted financial aid.

The case file for the first complaint included data that were obtained during OCR's investigation from April 1991 to March 1992. This

investigation was still in progress when the second complaint was filed in July 1992. The case file for the second complaint included data obtained during OCR's investigation from July 1992 to October 1992. No documents appeared in the case file from October 1992 until August 1994.

On August 11, 1994, OCR issued a closeout letter to the complainant, which broke down the two complaints into three issues: (1) complainant was denied admission to law school in February 1991 because of race, national origin, and retaliation; (2) complainant was denied admission to law school in February 1992 because of race, national origin, and retaliation; and (3) LEOP denied Asian-Americans automatic consideration for financial aid and admission. In the letter, OCR stated that it had found insufficient evidence to support the first two individual allegations but that it would make a separate determination on the third allegation, which is a class issue.

OCR officials said that these cases were delayed because they dealt with race-targeted financial aid issues, which OCR was in the process of reexamining. OCR headquarters officials explained that the OCR regional office was directed to hold its LOF until the policy statement was issued. This directive was later communicated orally, so no documents were included in the case files, an official said. Although OCR conducted part of the investigation in 1991 and 1992, OCR waited until the policy statement on race-targeted financial aid became effective in May 1994 to finalize its investigation.

The LOF on the first two allegations was issued less than 3 months after the policy guidance took effect. The class issue has taken more time. OCR decided that additional facts were needed to determine if LEOP complied with title VI in light of the new guidance. In March 1995, OCR requested more data from the university on the class issue, and in July and August 1995, the university submitted additional data. As of September 1995, the case was still open.

## Massachusetts Institute of Technology (Case No. 01-92-8083)

An Asian-American man filed a complaint on behalf of his son, alleging that the Massachusetts Institute of Technology (MIT) discriminated against Asian-Americans by admitting less qualified applicants from other races and nationalities. The complainant cited a newspaper article that reported how five poor Hispanic students from Texas had been accepted by MIT and provided details of their high school grades and Scholastic Aptitude Test (SAT) scores. The complainant also contended that Asian-Americans as a

class were treated differently in the admissions process and believed that MIT had set a quota on the number of Asian-Americans that would be accepted.

Beginning in June 1993, OCR investigated the complaint through reviewing pertinent documents and records and interviewing various involved parties. OCR found no violations and issued its LOF on April 22, 1994. OCR exceeded the established time frames for this case. The standard in effect at the time the case was initiated was that an LOF be completed within 135 calendar days of when a complete complaint was filed; this investigation took about 18 months to complete.

The case file did not include information to explain (1) the delay between when the complaint was filed and when the investigation began and (2) the reasons it took so long to complete the investigation and issue the LOF. OCR officials told us that some of the delay in initiating the investigation was attributable to the region's efforts to coordinate the investigation of this case with other admissions cases that had been filed in Region I (Boston) and Region II (New York). Officials also told us that the investigation needed to be carefully planned to avoid the extraordinary consumption of resources that a similar investigation at Harvard University had entailed.

# Complaint Investigations and Compliance Reviews: Response Times, Benefits, and Changes, by Minority Group

**Table III.1: Average Time of Complaint Investigations Resolved, by Minority Group**

Fiscal years 1988-94

| | Asian-Americans | African-Americans | Hispanics | Minority whites[a] | Others | Total |
|---|---|---|---|---|---|---|
| **Complaint investigations resolved** | | | | | | |
| Admissions | 40 | 115 | 31 | 21 | 41 | 248 |
| Non-admissions | 74 | 816 | 134 | 85 | 154 | 1,263 |
| **Total** | **114** | **931** | **165** | **106** | **195** | **1,511** |
| **Average time (in days)** | | | | | | |
| Admissions | 297 | 129 | 276 | 162 | 108 | 174 |
| Non-admissions | 108 | 125 | 105 | 83 | 127 | 119 |
| **Total** | **175** | **125** | **137** | **98** | **122** | **128** |

[a]Those from Eastern Europe, Southern Europe, and the Middle East.

**Table III.2: Complaint Investigations Resulting in Benefits to the Complainants or Changes, by Minority Group**

Fiscal years 1988-94

| | Asian-Americans | African-Americans | Hispanics | Minority whites[a] | Others | Total |
|---|---|---|---|---|---|---|
| **In numbers** | | | | | | |
| Admissions cases resolved | 40 | 115 | 31 | 21 | 41 | 248 |
| Non-admissions cases resolved | 74 | 816 | 134 | 85 | 154 | 1,263 |
| **Total** | **114** | **931** | **165** | **106** | **195** | **1,511** |
| Admissions cases with benefits to complainant or changes by school | 16 | 23 | 5 | 6 | 8 | 58 |
| Non-admissions cases with benefits to complainant or changes by school | 6 | 111 | 17 | 9 | 13 | 156 |
| Total cases with benefits to complainant or changes by school | 22 | 134 | 22 | 15 | 21 | 214 |
| **In percent** | | | | | | |
| Benefits and changes of admission cases resolved | 40 | 20 | 16 | 29 | 20 | 23 |
| Benefits and changes of non-admissions cases resolved | 8 | 14 | 13 | 11 | 8 | 12 |
| **Total** | **19** | **14** | **13** | **14** | **11** | **14** |

[a]Those from Eastern Europe, Southern Europe, and the Middle East

**Table III.3: Title VI Complaint Investigations Resolved, by Minority Group**

October 1, 1994, to June 30, 1995

| | Admissions with benefits | | Admissions no benefits | | Non-admissions with benefits | | Non-admissions no benefits | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|
| Minority group | No. | Average time | No. | Average time | No. | Average time | No. | Average time | No. | Average time |
| Asian-Americans | 3 | 667 | 0 | 0 | 0 | 0 | 10 | 192 | 13 | 302 |
| Hispanics | 1 | 84 | 1 | 38 | 6 | 199 | 29 | 62 | 37 | 84 |
| American Indians | 2 | 193 | 0 | 0 | 2 | 118 | 3 | 29 | 7 | 101 |
| African-Americans | 1 | 28 | 22 | 88 | 16 | 212 | 115 | 102 | 154 | 111 |
| Class actions | 0 | 0 | 1 | 70 | 0 | 0 | 2 | 66 | 3 | 67 |
| Whites | 0 | 0 | 13 | 125 | 1 | 587 | 5 | 61 | 19 | 132 |
| Minority whites[a] | 0 | 0 | 4 | 157 | 3 | 93 | 11 | 91 | 18 | 106 |
| Multiple title VI[b] | 0 | 0 | 0 | 0 | 1 | 1,301 | 6 | 106 | 7 | 277 |
| **Total** | **7** | **357** | **41** | **105** | **29** | **241** | **181** | **97** | **258** | **121** |

[a]Those from Eastern Europe, Southern Europe, and the Middle East.

[b]Multiple title VI cases are those that include more than one title VI issue, that is, one case may include allegations about both race and national origin discrimination.

**Table III.4: Average Time of Compliance Reviews Completed, by Minority Group**

Fiscal years 1988-94

| | Asian-Americans | African-Americans | Hispanics | Class actions | Multiple title VI | Total |
|---|---|---|---|---|---|---|
| **Compliance reviews completed** | | | | | | |
| Admissions cases | 3 | 16 | 1 | 14 | 5 | 39 |
| Non-admissions cases | 1 | 7 | 1 | 9 | 1 | 19 |
| **Total** | **4** | **23** | **2** | **23** | **6** | **58** |
| **Average time in days** | | | | | | |
| Admissions cases | 219 | 117 | 128 | 299 | 238 | 174 |
| Non-admissions cases | 120 | 125 | 45 | 103 | 87 | 108 |
| **Total** | **195** | **120** | **87** | **223** | **213** | **174** |

**Table III.5: Compliance Reviews Resulting in Benefits and Changes, by Minority Group**

Fiscal years 1988-94

| | Asian-Americans | African-Americans | Hispanics | Class actions | Multiple title VI | Total |
|---|---|---|---|---|---|---|
| **In numbers** | | | | | | |
| Admissions | 3 | 16 | 1 | 14 | 5 | 39 |
| Non-admissions | 1 | 7 | 1 | 9 | 1 | 19 |
| **Total** | **4** | **23** | **2** | **23** | **6** | **58** |
| Admissions cases resulting in remedy or change | 3 | 11 | 1 | 5 | 2 | 22 |
| Non-admission cases resulting in remedy or change | 0 | 3 | 1 | 2 | 0 | 6 |
| **Total** | **3** | **14** | **2** | **7** | **2** | **28** |
| **In percent** | | | | | | |
| Remedy or change to admissions | 100 | 69 | 100 | 36 | 40 | 56 |
| Remedy or change to non-admissions | 0 | 43 | 100 | 22 | 0 | 32 |
| **Total** | **75** | **61** | **100** | **30** | **33** | **48** |

**Table III.6: Title VI Complaint Investigations Over 180 Days Old**

| Days pending | As of May 21, 1993 | As of Sept. 30, 1994 | As of June 30, 1995 |
|---|---|---|---|
| 2,000+ | 1 | 1 | 2 |
| 1,600-1,999 | 1 | 6 | 3 |
| 1,200-1,599 | 15 | 3 | 6 |
| 1,000-1,199 | 7 | 7 | 3 |
| 800-999 | 12 | 5 | 1 |
| 600-799 | 17 | 6 | 10 |
| 500-599 | 24 | 6 | 1 |
| 400-499 | 15 | 20 | 12 |
| 300-399 | 24 | 23 | 15 |
| 181-299 | 51 | 45 | 47 |
| **Total** | **167** | **122** | **100** |

**Table III.7: Title VI Compliance Reviews Over 180 Days Old**

| Days pending | As of May 21, 1993 | As of Sept. 30, 1994 | As of June 30, 1995 |
|---|---|---|---|
| 2,000+ | 0 | 0 | 2 |
| 1,600-1,999 | 0 | 2 | 0 |
| 1,200-1,599 | 4 | 1 | 0 |
| 1,000-1,199 | 0 | 1 | 0 |
| 800-999 | 0 | 0 | 2 |
| 600-799 | 3 | 0 | 1 |
| 500-599 | 0 | 5 | 0 |
| 400-499 | 0 | 2 | 3 |
| 300-399 | 2 | 1 | 2 |
| 181-299 | 1 | 6 | 4 |
| **Total** | **10** | **18** | **14** |

# Comments From the Department of Education and GAO's Evaluation

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

SEP 26 1995

Ms. Linda G. Morra
Director, Education
and Employment Issues
U.S. General Accounting Office
Health, Education, and
Human Services Division
Washington, D.C. 20548

Dear Ms. Morra:

We have reviewed the draft report of the U.S General Accounting Office entitled Efforts by the Office for Civil Rights to Resolve Asian-American Complaints, HEHS 95-236. Enclosed are the comments of the Department of Education on the draft Report. We understand that they will be included as part of the final Report. Thank you for the opportunity to comment.

If you have any questions about our comments, please feel free to call me or Arthur Coleman, at 205-5413.

Sincerely,

Norma V. Cantu
Assistant Secretary
for Civil Rights

Enclosure

400 MARYLAND AVE. S.W. WASHINGTON, D.C. 20202-1100

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**COMMENTS OF THE U.S. DEPARTMENT OF EDUCATION
ON A DRAFT REPORT OF THE U.S. GENERAL ACCOUNTING OFFICE:
DEPARTMENT OF EDUCATION: EFFORTS BY THE OFFICE FOR CIVIL RIGHTS
TO RESOLVE ASIAN-AMERICAN COMPLAINTS**

Following are the comments of the Department of Education on the draft report of the General Accounting Office (GAO), entitled Department of Education: Efforts by the Office for Civil Rights to Resolve Asian-American Complaints, HEHS-95-236 (Draft Report). The comments are divided into two sections: the first section contains general comments on the three issues investigated by the GAO; the second section contains more specific comments on specific statements in the Draft Report.

## I. General Comments

### A. Whether the Office for Civil Rights (OCR) followed established policies and procedures for timeliness and record-keeping for the 13 specific cases investigated by GAO

The GAO notes that OCR followed established policies and procedures in investigating each of the 13 cases, and that OCR's decisions in the cases were consistent with the law, policies, and procedures in effect. The GAO finds, however, that official case files did not always include required documents -- while they were generally complete with respect to regional activity, they were not always updated to include activities in headquarters. The GAO also finds that official case files were not maintained in headquarters.

The Draft Report is misleading in stating that the official case files did not always include required documents. It is unclear what documents the GAO is stating were required to be included but were not included. The records generated in connection with the investigation of the 13 cases were maintained in accordance with OCR record-keeping requirements.

OCR established record-keeping procedures required that case files be maintained in regional offices and include documents related to the actual case investigation, e.g., the complaint, data request letters and responses, the investigative plan, the investigative report, records of interview contacts, etc. The established procedures did not require that the regional files reflect all case activity in headquarters. Thus, to the extent that regional files did not include documents indicative of all headquarters activity, the regional case files were not incomplete under the governing procedures.

See comment 1

Second, while it is true that the headquarters office did not maintain official case files, the Draft Report is misleading in suggesting that OCR's records pertaining to the 13 cases were incomplete. Records pertaining to headquarters activity in

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See comment 2.

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the 13 cases were maintained in OCR's headquarters files and were available to the GAO.

OCR's filing system is designed overall to ensure that appropriate documentation is in place to permit OCR to carry out its various functions and responsibilities. The system that has been in place has met the various needs that OCR has of a filing system. In the regional offices, a case-based filing system is most appropriate, given that the primary function of a regional office is to investigate cases. The case-based filing system is not duplicated in headquarters. Rather, the filing system maintained in the headquarters office is a chronology-based filing system. A chronology-based filing system is suited to the needs of the headquarters office which, unlike the regional offices, addresses a great variety of types of matters other than case investigations. Among the documents included in the headquarters filing system are documents related to specific cases, such as documents that provide guidance or instructions for the regional offices on cases that are being reviewed in headquarters. The filing system does not maintain a record of all drafts of a particular document, but does maintain the significant documents, such as a final signed draft of a document, reflecting the position or decision adopted by the signing official.

If a draft Letter of Findings or an issue in a case was referred by the region to headquarters for consultation or review, a record of activity in headquarters was maintained in the headquarters office. Each referral of a case or an issue in a case to headquarters was treated as a unique assignment in headquarters and was separately tracked as such. This system has allowed OCR to identify and maintain a record of substantive decisions reached or action taken in a given case. The records are readily available to staff.

B. How Timeliness and Outcomes for Asian-American Cases Compare with Timeliness and Outcomes for Cases Involving Other Racial Groups

The GAO has found that Asian-American cases generally took longer to process but that this resulted at least in part because: 1) Asian-American cases included a higher percentage of admissions cases than did the cases of any other racial group and admissions cases take longer to process, and 2) Asian-American cases resulted in more violations and corrective action by the school than did the cases of any other racial group. The GAO examined six categories: 1) total complaints; 2) admissions complaints; 3) non-admissions complaints; 4) total compliance reviews; 5) admissions compliance reviews; and 6) non-admissions compliance reviews.

Page 3

First, the Final Report should note the extent to which individual cases have unduly skewed the results of the statistical analysis of case processing time. For example, of all complaints resolved in 1995, 13 complaints involved Asian-Americans. (OCR did not resolve any compliance reviews involving Asian-Americans in 1995.) These cases took an average of 302 days to resolve, as the GAO notes. As the GAO further notes, these results were skewed by one case which took 1,776 days to resolve. Importantly, the reason this one case took so long is because it involved race-targeted student financial aid and OCR could not issue findings in cases involving this issue until the race-targeted financial aid guidance was issued by the Department in the Federal Register. Issuance of the race-targeted financial aid guidance was delayed because the Secretary of Education agreed to a request by several members of Congress that he withhold issuance of the final guidance until the GAO could complete a study of this issue. Another Asian-American case during the same period also involved race-targeted student financial aid, had a lengthy processing time for the same reason (1,503 days), and unduly skewed the results. Absent these two race-targeted aid cases, the time for processing Asian-American cases in 1995 would have been 58 days, well below the average for resolution of complaints in FY 1995, which was 121 days.

See comment 3
See pp. 6-9.

Similarly, in 1994, two complaints unduly skew the average for resolution of Asian-American complaints. (OCR did not resolve any Asian-American compliance reviews in 1994.) One case, which took 1,214 days to resolve, was a race-targeted student financial aid, the resolution of which, like the two cases in 1995, was held up pending the issuance of the race-targeted student financial aid guidance. The second case, the University of California at Berkeley School of Optometry, took 2,108 days to resolve. This complaint of individual discrimination against an Asian-American would have been resolved much earlier than it was, but OCR decided, based on the evidence obtained, to include two additional issues within the investigation: 1) the affirmative action admissions program; and 2) possible discrimination against Asian-Americans as a class. Taken as a whole, Asian-American cases for 1994 took an average of 304 days to resolve. Absent these two cases, Asian-American cases took an average of 180 days to resolve.

Second, the Final Report text should note that the GAO data shows that Asian-American non-admissions complaints did not take longer to resolve than non-admissions complaints of other groups. The average time to resolve all non-admissions complaints was 119 days. The average time to resolve Asian-American non-admissions complaints was 108 days. The average time to resolve non-admissions complaints for other racial groups was: 127 days for African-American cases; 125 days for the group "other"; 105 days for Hispanic cases (comparable to the average time for Asian-American cases); and 83 days for minority white cases.

See comment 4.
See p. 7.

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See comment 5.
See p. 8.

See comment 6.
See p. 9.

See comment 7.

Page 4

Third, with respect to compliance reviews, the heading in the Draft Report that "Completion of Compliance Reviews Took More Time for Asian-Americans" is inaccurate. As the GAO data itself indicates, the average case processing times for "class" compliance reviews and multiple Title VI compliance reviews were longer than the average case processing time for Asian-American compliance reviews. This was true for both total compliance reviews and admissions compliance reviews. As the GAO data further indicates, in the group of non-admission compliance reviews, African-American compliance reviews took longer to process than Asian-American non-admissions compliance reviews.

The GAO further notes in its Draft Report that a longer case processing time for Asian-American cases is at least in part a result of a greater percentage of violations found, corrective action taken, or benefit obtained in Asian-American cases, compared to cases for other racial groups. In its analysis of total complaints and admissions complaints, the GAO found that Asian-Americans had the highest percentage of change and benefit of any racial group. With respect to compliance reviews, the GAO states that all minority groups benefitted. The text of the Final Report should reflect the GAO data which shows that Asian-Americans ranked first (along with Hispanics) among all racial groups in benefit or change gained in admissions compliance reviews and ranked second among all six racial groups analyzed in percentage benefit or change gained in total compliance reviews.

C. Whether Administrative Changes Have Improved OCR's Operations in Conducting Investigations

With respect to the numerous administrative changes implemented beginning in 1993, the Final Report should note that OCR undertook these changes in order to improve overall operations, generally, as well as case processing, specifically. The Final Report also should be more clear in identifying the relationship between those changes and the significant improvements in OCR's case processing that are a result of those changes. As an example of these improvements, the GAO data shows that the number and percentage of postsecondary education cases pending over 180 days decreased from 1988 to 1994. OCR data shows that the number and percentage of cases for all levels of education pending over 180 days likewise have decreased, since the administrative changes were undertaken. In May 1993, there were 526 cases over 180 days that were pending. In June 1995, there were 209 such cases. This represents a decline of 60% from May 1993 to June 1995.

As further evidence of the positive effects of these administrative changes, OCR also determined that the percentage of cases resolved increased by 37% during the two years after the



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changes were initiated, compared to the prior two-year period. During the two-year period 5/91-5/93, 8,715 cases were resolved. During the two-year period 5/93-6/95, 11,909 cases were resolved.

The dramatic effect of these administrative changes is evidenced by additional data. From FY 1990 through FY 1994, OCR's complaint workload increased by 56%. In FY 1990, OCR received 3,382 complaints. In FY 1994, OCR received 5,281 complaints. Of the years FY 1990, 1991, 1992, 1993, and 1994, OCR had the highest number of both complaint receipts (5,281) and compliance review starts (157) in FY 1994. (The next highest number of complaint receipts and compliance review starts occurred in FY 1993 - 5,088 and 100, respectively.) Notwithstanding this significant increase in OCR's case load, FY 1994 also ranked first in the number of complaint resolutions (5,769) and compliance review closures (89). (FY 1993 ranked second in the number of complaint resolutions (4,479) and compliance review closures (84)). Thus, as a result of the administrative changes, notwithstanding an increase of both complaints and compliance reviews, OCR resolved a greater number of complaints and compliance reviews and did so in a more timely manner than in the past.

II. Additional Comments

A. Draft Report Text

1. Page 2, last paragraph. The Draft Report states that official case files did not always include required documents. This appears to be inconsistent with the statement on page 6 of the Draft Report, last paragraph, that while the 13 cases were in the regional offices, the official case files were relatively complete, although they were seldom updated to include pertinent documents after headquarters became involved. The statement on page 2 may stem from confusion as to what OCR's established record-keeping procedures required. The record-keeping procedures are discussed in detail in the General Comments, A, above. As discussed, OCR record-keeping procedures did not require the maintenance of headquarters documents in regional case files. Headquarters documents were maintained in chronological files. Thus, although such documents may not have been included in regional files for the 13 cases, the regional files were maintained in a manner consistent with OCR's requirements.

See comment 8
See p. 2.

2. Page 2, last paragraph. The Draft Report states that seven cases took 26 months to complete. It should state that six cases took 26 months to complete.

See comment 9

3. Page 3, first paragraph. The Draft Report states that OCR considers cases pending more than 180 days to be overage. The Final Report should note that while 180 days is a benchmark for

See comment 10.
See p. 2.



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assessing timeliness, OCR does not have a standard definition of an overage case. Whether a case is "overage" depends on the individual case. Cases that are relatively simple may require less than 180 days, while more complex cases may require more than 180 days.

See comment 11.
See p. 3.

4. Page 5, last paragraph. The Draft Report states that OCR's funding level in FY 195 was "more than $58.3 million." OCR's budget, after the rescission, was $58.2 million.

See comment 12.
See p. 4.

5. Page 6, second paragraph. The Draft Report states that 46% of the reviews that OCR initiated in 1994 involved disability issues and 54% of the reviews focused on race, national origin, or sex. These figures are incorrect. In 1994, 6% of the compliance review starts involved solely disability issues; 8% involved disability and other issues; 62% involved race and national origin issues; 17% involved gender issues; and 6% involved other issues.

See comment 13.
See p. 4.

6. Page 6, second paragraph. The Draft Report states that OCR plans to initiate 200 compliance reviews for FY 1995. By the end of FY 1995, OCR anticipates that it will have initiated approximately 100 compliance reviews. While in the Spring of 1994, OCR had projected initiating 200 compliance reviews in FY 1995, the number actually initiated for FY 1995 will be lower, due in large part to the loss of approximately 50 employees since the time that the projection was made.

See comment 14.
See p. 6.

7. Page 9, first paragraph. The definition of a "multiple Title VI" case, as a case that involves Title VI issues and issues under other statutes, is incorrect. The correct definition is that the case involves multiple Title VI issues, i.e., race and national origin.

See comment 15.
See p. 11.

8. Page 17, first full paragraph. The Draft Report states that by October 1995, OCR will have developed its first strategic plan. This statement should be corrected. OCR has had a strategic plan in effect since April 1994, and has been operating under that strategic plan.

See comment 16.
See p. 11.

The last sentence of this paragraph, concerning a system for setting priorities for complaint investigations, should be deleted. OCR is not pursuing this option at this time.

See comment 17.
See p. 12.

9. Page 18, last paragraph. The Draft Report notes the status of OCR's electronic network as of June 1995. As of September 1995, six regions are on line. OCR plans to have all regional offices on network by the end of FY 1996.

See comment 18.
See p. 13.

10. Page 19, first full paragraph. The Draft Report notes that OCR plans to assign the maximum number of staff to program activities. The Final Report should note that as an element of

this plan, OCR will devote at least 1/3 of the headquarters staff directly to case resolution by December 1995; at the present, headquarters is not directly involved in its own case load, with limited exceptions.

See comment 19
See p. 13

11. Page 20, second paragraph. The Draft Report states that the remaining regional offices (offices other than the New York and Kansas City Regional Offices) are expected to reorganize during FY 1996 and 1997. This statement should be revised. All offices started moving toward a team-based structure in September 1994. OCR expects all of the regional offices and the headquarters office to be reorganized by January 1996.

See comment 20
See p. 14

12. Page 21, first full paragraph. The Draft Report states that OCR could not show "why the improvements had taken place." It is not clear if the statement means that OCR could not show why the various administrative changes had been undertaken, or why improvements in timeliness and operation had occurred. OCR undertook the various administrative changes because OCR became aware that its processes could be made more effective through change. The improvements noted in case timeliness and operation are a direct result of these changes.

B. Appendix II

See comment 21
See p. 24

1. Page 28, University of California at Berkeley, Boalt Hall. The Draft Report states that on October 13, 1989, Representatives Rohrabacher, Gingrich, and Duncan wrote to OCR, requesting specific answers to questions about race-based waiting lists. This is incorrect. On October 12, 1989, these representatives wrote to the Justice Department, not to OCR, about the admissions program at Boalt Hall. The Justice Department referred this letter to OCR by letter dated October 26, 1989.

The October 13, 1989 letter discussed in the Draft Report was a letter from Representative Rohrabacher only, to OCR, inquiring about race-based wait lists at Boalt Hall.

See comment 22
See p. 24

The Draft Report states that from November 1990 to 1992, headquarters had concerns about the statistical analysis and there were numerous discussions about all aspects of the case, and "[a]s a result, it was 26 months from when the compliance review was initiated until the voluntary compliance and settlement agreement was signed." The Final Report should note that a significant portion of this time -- nine months, dating from January 1992, was devoted to settlement negotiations with the recipient. Furthermore, Boalt Hall was in the process of transitioning from one Dean to a new one.



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The Draft Report further states that the file does not document events from the November 1990 submission to headquarters to the signing of the settlement agreement in September 1992. However, records in the headquarters office document settlement negotiations that occurred during that period.

See comment 23
See p. 28

2. Page 34, UCLA Graduate Programs. The Draft Report states that OCR did not conduct its first on-site visit to UCLA until more than a year after notifying UCLA that it would begin a compliance review. The Final Report should also reflect that during that year, OCR conducted a pre-on site visit of UCLA to set out the scope of the investigation, identify what information UCLA had available, determine how it was grouped and formatted (such as on computer or in hard copy) and identify how the individual programs were broken down for purposes of making admissions decisions. During the same year, OCR also sent UCLA four data request letters, received and reviewed data from UCLA, and conducted a statistical analysis of the data.

See comment 24
See p. 34

3. Page 42, UC Berkeley School of Optometry. The Draft Report notes that one of the factors contributing to the length of time required for the investigation of this case, which was a complaint of individual discrimination on the basis of national origin (Chinese-American) was the decision to investigate the affirmative action program at the school as well. The Final Report should also indicate that another factor that contributed significantly to the case processing time was the decision to investigate possible discrimination against the class of Asian-Americans.

See comment 25
See p. 35

4. Page 45, the University of Hawaii at Manoa. The Draft Report states that although OCR could have continued the class issue in this case, it was not required to do so (bottom, page 45). The Draft Report also states that the complainant had not made any specific allegations on behalf of individuals other than himself, and that OCR determined that the allegations were insufficient to raise a class issue or to show that a practice existed that was discriminatory. These statements in the Draft Report appear to be inconsistent. OCR determined that the complaint did not raise class issues, so there were no class issues to continue.

See comment 26
See p. 40

5. Page 51, Massachusetts Institute of Technology. The Draft Report states that part of the delay in the investigation was attributable to efforts to coordinate the investigation of this cases with other cases filed by the same complainant in the same region and in the New York Region. It should be clarified that the complainant in the MIT case was not the same as the complainant in the other cases.

The following are GAO's comments on the Department of Education's letter dated September 26, 1995.

## GAO Comments

1. Our point in this section was that OCR did not have a complete official file for every case that included documentation on all phases of a complaint investigation or compliance review, including actions and decisions by OCR headquarters officials. Education, in its comments, said that records pertaining to OCR headquarters activity in the 13 cases were maintained in a chronological filing system, rather than a case file system, that suited the needs of headquarters staff. At headquarters, however, activities involving these cases, like teleconferences and data analysis, are not captured in the chronological files. Moreover, while documents on individual cases may be filed chronologically, the documents did not usually explain delays. As a result, we had to rely on oral statements by OCR headquarters staff for much of the information on the chronology of events while the cases were worked on in OCR headquarters.

2. We acknowledged that for some cases, documents prepared by OCR headquarters were sometimes included in the regional office files. As we reported, however, often the actions, decisions, and deliberations that occurred in headquarters that led to the issuance of a letter of findings or other documents reflecting OCR's official position on an issue were not included in the case files made available to us. Furthermore, reasons for delays of investigations and reviews were seldom documented at OCR headquarters; therefore, we had to rely largely on oral statements by headquarters officials for this information.

3. We agree that individual cases that took a long time to resolve would skew OCR's average time for completing complaint investigations and compliance reviews. We also acknowledge that in reporting information and statistics on OCR's timeliness in resolving its cases, we do not fully discuss all the factors that may affect the resolution of each case; for example, the legal complexities of a precedent-setting case or the great amount of analysis necessary in an admissions case. (See pp. 6 and 9.)

4. A paragraph discussing these data was added. (See p. 7.)

5. The caption on page 8 was revised.

6. Two sentences were added on page 9 to include additional information.

7. Our review dealt only with complaint investigations and compliance reviews in postsecondary schools that involved issues concerning title VI of the Civil Rights Act of 1964. There was no need for revisions.

8. The report was revised. (See p. 2.)

9. No revision was needed.

10. The report was revised to include Education's comment. (See p. 2.)

11. The report was revised to include updated information. (See p. 3.)

12. The report was revised to include correct percentages. (See p. 4.)

13. The report was revised to include updated information. (See p. 4.)

14. The report was revised to include the correct definition. (See p. 6.)

15. The report was revised to reflect Education's comment. (See p. 11.)

16. The sentence was deleted because of updated information. (See p. 11.)

17. The report was revised because of updated information. (See p. 12.)

18. The report was revised to include additional information. (See p. 13.)

19. The report was revised to include updated information. (See p. 13.)

20. The report was revised. (See p. 14.)

21. The report was revised to include additional information. (See p. 24.)

22. The report was revised to include additional information. (See p. 24.)

23. The report was revised to include additional information. (See p. 28.)

24. No revision was needed.

25. No revision was needed.

26. The report was revised. (See p. 40.)

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